UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

STANFORD HOSPITAL AND CLINICS[1]

Employer

and CASE 32-UC-401

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 715 (AFL-CIO, CLC)[2]

Petitioner/Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter called the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer and the Petitioner stipulated at the hearing that the Employer is engaged in commerce within the meaning of the National Labor Relations

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[1] Herein called the Employer.

[2] Herein called the Petitioner.

Act and is subject to the jurisdiction of the National Labor Relations Board. Based on the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), (7) of the Act.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner claims to represent certain employees of the Employer.

5. By its petition, the Petitioner seeks to clarify the bargaining unit to include approximately 10 full-time, regular part-time, and relief housekeeping employees in the classifications of housekeeping specialist, housekeeping assistant, housekeeping aide, and/or lead housekeeper employed by the Employer and assigned to the Clark Center, located along Campus Drive, Stanford, California 94305-5175, a building owned and operated by Stanford University and the Stanford University School of Medicine. The Employer opposes such clarification. It contends that the Petitioner waived the right to seek inclusion of the disputed employees in the bargaining unit when it agreed during collective bargaining negotiations to contract language that included only certain specified work locations in the unit description, and that even if Petitioner did not waive its right to seek unit clarification, clarification is nevertheless inappropriate because Petitioner has failed to rebut the presumption that the employees working at the Clark Center form a separate appropriate unit. For the reasons set forth below in the Analysis section, I conclude that the Petitioner has failed to rebut the presumption that the employees working at the Clark Center constitute a separate appropriate unit, and that under Board law it would be inappropriate to accrete those employees into the existing collective-bargaining unit.

THE FACTS[3]

On November 5, 1999, UCSF Stanford Health Care (the predecessor to the Employer Stanford Hospital and Clinics) and the Union entered into a collective bargaining agreement with a term running from November 5, 1999 through November 4, 2001. The Employer and the Union subsequently agreed to a one-year extension of that contract through November 4, 2002. In August 2002, the parties began negotiating for a new contract. On August 14, 2002, the Union submitted its opening proposal as to recognition language, which read as follows:

> Pursuant to the Certification of Representation issued by the National Labor Relations Board (NLRB) in Case No. 32-RC-4504, as modified in Case No. 32-UC-363, Stanford Hospitals and Clinics ~~UCSF Stanford~~ recognizes the Union, as the sole and exclusive representative for the purpose of collective bargaining for all full time, part-time and relief non-professional employees performing service and patient care functions employed by the employer ~~at Stanford Hospital, Lucile Packard Children's Hospital, Welch Road and Blake Wilbur Drive locations~~ in positions or classifications listed as included in Appendix A, excluding all employees represented by any other labor organization, excluding all managerial, supervisory or confidential employees within the meaning of the NLRA, and excluding all other employees. (sic)

[3] Insofar as they are relevant, I hereby adopt and incorporate the findings of fact contained in the Decision and Order of my predecessor Regional Director in Case 32-UC-375, as entered into the record in the present case, and as affirmed by the Board in its Order dated September 4, 2002, as also entered into the record in the present case.

The Employer rejected this proposal. Instead, on November 4, 2002, the Employer offered a counterproposal that retained the then-current contract recognition language, which reads as follows:

> Pursuant to the Certification of Representative issued by the National Labor Relations Board (NLRB) in Case No. 32-RC-4504, as modified in Case No. 32-UC-363, UCSF Stanford Health Care recognizes the Union, as the sole and exclusive representative for the purpose of collective bargaining for all full-time, part-time and relief non-professional employees performing service and patient care functions employed at Stanford Hospital, Lucile Packard Children's Hospital, Welch Road and Blake Wilbur Drive locations in positions or classifications listed as included in Appendix A, excluding those positions or classifications listed as excluded in Appendix A, excluding all employees represented by any other labor organization, excluding all managerial, supervisory, or confidential employees within the meaning of the NLRA, and excluding all other employees.

Late in the evening of November 4, 2002, the Employer submitted its last, best and final offer, which retained the above-quoted recognition language. The parties adjourned their bargaining session without having reached agreement.

On December 2, 2002, during a mediation session, the Union submitted a package proposal, which had to be accepted or declined in its entirety. This proposal included adherence to the then current contract recognition language found at Section 1.3.1 of the collective bargaining agreement. On that same date, the Employer rejected the Union's package proposal. On December 17, 2002, the Union sent a letter to counsel for the Employer indicating the Union's willingness to accept the Employer's November 4, 2002 last,

best and final offer, subject to certain conditions, which included, among other things, the payment of signing bonuses to unit employees.

Upon the Employer's agreement to the conditions set forth in the Union's December 17, 2002 letter, the parties entered into a collective bargaining agreement with a term of December 19, 2002 through November 4, 2005. That collective bargaining agreement contains the following recognition language:

> Pursuant to the Certification of Representation issued by the National Labor Relations Board (NLRB) in Case No. 32-RC-4504, as modified in Case No. 32-UC-363, the Employer recognizes the Union, as the sole and exclusive representative for the purposes of collective bargaining for all full-time, part-time and relief non-professional employees performing service and patient care functions employed at Stanford Hospital, Lucile Packard Children's Hospital, Welch Road and Blake Wilbur Drive locations, in positions or classifications listed as included in Appendix A, excluding those positions or classifications listed as excluded in Appendix A, excluding all managerial, supervisory or confidential employees within the meaning of the NLRA, and excluding all other employees.

There is no evidence that the parties had any discussions at the bargaining table about the ongoing construction of the Clark Center or about the possibility that Stanford University and the Stanford University School of Medicine might award the Employer the housekeeping contracts for other of its present or future locations, such as the Clark Center.

In March or April 2003, Stanford University approached Employer Director of Housekeeping Karl Hickethier about the possibility of the Employer submitting a bid to be awarded a contract to provide housekeeping services at the Clark Center. In June 2003, Stanford University and the Employer reached a contract for the Employer to provide

housekeeping services at the Clark Center for one year, with 11.65 full time positions allotted or budgeted, including one housekeeping supervisor position.

On June 18, 2003, 10 housekeeping assistant and 1 housekeeping supervisor job openings in the Clark Center were posted on the Employer's website as non-union positions, and various persons began applying for the new positions. Although it is unclear from the record when construction on the Clark Center began,[4] it opened for business in June or July 2003.[5] Between July and October 2003, the Employer filled 8 of the 10 housekeeping assistant positions, with two positions remaining vacant. The eight employees chosen for these positions had formerly been performing housekeeping work at other facilities owned by the Employer or at facilities where the Employer had a housekeeping contract. However, these employees had all been working at such facilities as employees of a temporary agency, and had never been employed by the Employer or included in the bargaining unit.[6]

In mid-September 2003, the Employer hired King Iu as the housekeeping supervisor for the Clark Center.[7] Iu works on the evening shift but is responsible for both the day shift

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[4] There is no documentary evidence in the record as to the date on which construction commenced. The only evidence on this point is the testimony of Hickethier that the Clark Center was built and designed by the same entity which built and designed the Center for Clinical Science and Research (CCSR), and that given the two year timetable for construction of the CCSR, it is likely that the Clark Center also took approximately two years to build. Therefore, Hickethier surmised that the June/July 2003 completion of the Clark Center indicated that its construction started in approximately June/July 2001.

[5] The exact date on which operations commenced is not evident from the record.

[6] There is no allegation or contention in this case that the temporary employees have previously, or should now, be accreted into the unit. Therefore this case does not pose the issues raised by or addressed in *M.B. Sturgis, Inc.*, 331 NLRB No. 173 (2000) and its progeny.

[7] During the short period after the Clark Center opened before Iu was hired, the Clark Center housekeeping employees were supervised by Hickethier and his assistant, Magno Gonzalez. However, there is no evidence that Hickethier or Gonzalez have continued to provide any immediate supervision to the Clark Center employees since the hiring of Iu.

and evening shift at the Clark Center. Iu formerly worked as a lead housekeeper (a bargaining unit position) at Stanford Hospital. Iu and the housekeeping supervisors with responsibility for other facilities (Daniel Hernandez for School of Medicine buildings and Ambrosia Chavez for Stanford Hospital buildings) each report to Patrick Pete, who essentially substitutes for Hickethier during the evening shift, when Hickethier is not working.[8] Iu evaluates the work of housekeeping employees at the Clark Center, assigns and directs their work, and recommends that they be disciplined. The evidence also reflects that Iu has authority to issue verbal warnings to employees without notification to, or the consent of, Iu's supervisors. Iu is responsible for handling calls from employees unable to work due to illness, and he redistributes work accordingly. Iu has authority to grant employees' requests for time off, and to send home intoxicated or erratically behaving employees without consultation with or approval of supervisors above him.

On October 1, 2003, the Union filed the petition in this case seeking to include the housekeeping employees assigned to the Clark Center in the preexisting bargaining unit.

ANALYSIS

Turning first to the merits of the petition, the Board has followed a restrictive policy in finding accretions to existing units, because employees accreted to such units are not accorded a self-determination election, and the Board seeks to insure the employees' rights to determine their own bargaining representative. See *Compact Video Services*, 284 NLRB 117, 119

[8] There is nothing in the record to indicate that Pete regularly visits the Clark Center in the course of performing his duties or that he would ever have occasion to visit the Clark Center unless summoned there by Iu.

(1987). Further, "[i]t is well settled that the doctrine of accretion will not be applied where the employee group sought to be added to an established bargaining unit is so composed that it may separately constitute an appropriate bargaining unit." *Hershey Foods Corp.*, 208 NLRB 452, 458 (1974).

The Board has also consistently held that a single facility unit geographically separated from other facilities operated by the same employer is presumptively appropriate, even though a broader unit might also be appropriate. See *Passavant Retirement and Health Center, Inc.*, 313 NLRB 1216, 1218 (1994); *Gitano Group, Inc.*, 308 NLRB 1172 (1992); *Manor Healthcare Corp.*, 285 NLRB 224, 225 (1987). This presumption may be rebutted by a showing that the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit, and that the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted. See *Safeway Stores, Inc.*, 256 NLRB 918 (1981). The Board will not, under the guise of accretion, compel a group of employees who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret election or by some other evidence that they wish to authorize the union to represent them. *Melbet Jewelry Co., Inc.*, 180 NLRB 107, 110 (1969).

In determining whether the presumption has been rebutted, the Board examines such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; common supervision; distance between locations; and bargaining history. See *Mercy Health Services*, 311 NLRB 367 (1993). The Board has repeatedly identified the

degree of interchange and separate supervision as particularly important factors in determining whether an accretion is warranted. See *Towne Ford Sales*, 270 NLRB 311, 311-312 (1984), aff'd sub nom., *Machinists Local 1414 v. NLRB*, 759 F.2d 1477 (9th Cir. 1985*); Passavant Retirement and Health Center, Inc.*, 313 NLRB 1216, 1218 (1994).

Addressing the most important factors first, there is no evidence in the record of interchange between the employees performing services at the Clark Center and the bargaining unit employees performing services at other locations. The employees at the Clark Center did not transfer from bargaining unit positions to the Clark Center. The Clark Center employees punch their own time clock located in the Clark Center, and there is no evidence that employees working at other locations utilize the Clark Center time clock. The Clark Center employees use the break room and/or lounge located within the Clark Center and do not use break rooms and/or lounges located in other facilities. There is also no evidence that employees working in other facilities use the Clark Center break room and/or lounge. If and when Clark Center housekeepers are unable to come to work, the evidence reflects that they are not replaced, or that the work ordinarily performed by such housekeepers is redistributed among other Clark Center housekeeping employees. There is no indication that such work has been or would be assigned to or performed by bargaining unit employees ordinarily stationed at other locations. Conversely, there is no evidence in the record that housekeeping employees usually assigned to the Clark Center have been, or ever would be, assigned to perform housekeeping services at locations other than the Clark Center. While the similar skills of the Clark Center and other unit employees might theoretically permit interchange, no weight is assigned to the fact that interchange is feasible when in fact there has been no actual

interchange of employees. *Towne Ford Sales*, 270 NLRB 311 (1984); *Combustion Engineering*, 195 NLRB 909, 912 (1972). I find the complete absence of interchange to be highly significant in the circumstances of this case, and note that substantially more compelling evidence of interchange than that shown here has been found insufficient to overcome the single-facility presumption. See *Cargill, Inc.*, 336 NLRB 1114 (2001) (13-14 instances of interchange among 23 employees over an 8-month period not sufficient to overcome single-facility presumption). Therefore, the evidence regarding no interchange strongly supports a finding that Petitioner has not rebutted the single-facility presumption in this case.

Turning to the issue of common immediate supervision, I find that the record evidence supports the conclusion that King Iu constitutes a supervisor within the meaning of Section 2(11) of the Act, and I note that the Union did not argue that Iu is an employee rather than a Section 2(11) supervisor.[9] As noted above, Iu evaluates the work of housekeeping employees at the Clark Center, assigns and directs their work, recommends they be disciplined, and unilaterally administers discipline in the form of verbal warnings. Iu receives calls from employees unable to work due to illness and redistributes work accordingly. Iu has authority to grant employees' requests for time off, and to send home intoxicated or erratically behaving employees without consultation with any supervisors above him. Iu alone brings cleaning supplies and materials to the Clark Center for the use of his employees. As the

[9] Moreover, even if I were to conclude that Iu's responsibilities did not confer statutory supervisor status upon him, I would nevertheless conclude that his management of the Clark Center reflects sufficient local autonomy with respect to the Clark Center to support the single-location presumption. See *Esso Corporation*, 298 NLRB 837, 840 (1990) (presumption of single-facility unit not rebutted given lack of regular and substantial interchange, and given presence of responsible employee—although not a statutory supervisor—responsible for overseeing operation at facility).

housekeeping supervisor, Iu is the highest-ranking maintenance person at the Clark Center. There is no evidence in the record that Hickethier or Pete have overruled or even questioned any decision by Iu of any kind. While there was vague testimony that Iu could also provide substitute supervision for employees of the CCSR if the CCSR supervisor were out sick or on vacation, there is no indication that this has in fact occurred, that Iu has consequently come into contact with any CCSR employees, that Iu has provided substitute supervision at any facilities other than the CCSR, or that any supervisor from another facility has provided substitute supervision of Clark Center employees in the absence of Iu.

I recognize that Clark Center employees and the bargaining unit employees do share common second-line supervision, in the form of Director of Housekeeping Karl Hickethier and Hickethier's night shift counterpart Patrick Pete. The Board, however, has expressly cautioned against reliance upon common upper-level supervision when day-to-day immediate supervision is distinct, as it is here. See *Passavant Retirement and Health Center, Inc.*, 313 NLRB 1216, 1218-1219 (1994); *Towne Ford Sales*, 270 NLRB 311, 311-312 (1984); *AVI Foodsystems, Inc.*, 328 NLRB 426, 430 (1999); *Bryan Infants Wear Company*, 235 NLRB 1305, 1306 (1978).[10]

In light of the evidence as a whole, I conclude that the Clark Center employees are separately immediately supervised by Iu, and that the absence of common immediate

[10] While the supervisors of the single facilities in *Passavant* and *Bryan Infants Wear* had authority to hire employees, and while there is no evidence in the record that Iu has authority to hire, I do not find that this fact alone meaningfully distinguishes *Passavant* or *Bryan Infants Wear* or otherwise casts doubt upon the conclusion that it is Iu who exercises day-to-day control and supervision of matters of interest to the Clark Center housekeeping employees.

supervision of Clark Center employees and bargaining unit employees working at other locations strongly bolsters the application of the single-facility presumption in this matter.

With respect to the remaining factors, the record reflects that the Clark Center employees and the bargaining unit employees have the same or similar skills, functions, wages, benefits and working conditions, and that the Clark Center employees perform their work at a building that is located about 12oo feet from a facility at which bargaining unit employees work.[11] The evidence also establishes that the Employer retains centralized control over labor relations.; however, under the circumstances of this case, I do not find that this centralized control detracts from the local autonomy enjoyed by King Iu at the Clark Center. See *Newspaper and Mail Deliverers' Union of New York and Vicinity*, 337 NLRB No. 172, slip op. at 6 (existence of centralized administration and control of labor relations policies found not to be inconsistent with finding of sufficient local autonomy to support single location presumption). . In sum, these factors generally weigh in favor of finding that the single-facility presumption has been rebutted and that an accretion is warranted.

As to the bargaining history factor, there is little to no record evidence with respect to the Employer's or the Union's subjective intent with respect to their unit description proposals, their rejections or withdrawals of unit descriptions or recognition proposals, or the Union's acceptance of the Employer's unit proposal. Because of that paucity of evidence, I am

[11] In this regard, I acknowledge that Clark Center employees wear uniforms that are slightly different from the uniforms worn by bargaining unit members at other locations, and that Clark Center employees, unlike employees at other locations, are occasionally required to clean or sweep outdoor walkways. However, I find these differences to be minimal and insubstantial especially when viewed in light of the numerous similarities in terms and conditions of employment.

constrained to conclude that the limited bargaining history in this matter is inconclusive, and provides neither support for, nor an argument against, accretion in this case.

As demonstrated above, there are some factors supporting Petitioners position, and other factors supporting the Employer's position. However, the factors most emphasized by the Board in determining whether a party has rebutted the single facility presumption; that is, the lack of interchange and common supervision, both support the Employer's position that the Clark Center employees may constitute a separate appropriate bargaining unit and that an accretion is not warranted in this case in this case. See *Towne Ford Sales, supra*, 270 NLRB at 312 (other factors such as president's control of general policy insufficient to establish accretion in face of separate daily supervision and lack of interchange); *Passavant*, *supra*, 313 NLRB at 1219 (geographical proximity and integration with employer's other campus facilities outweighed by substantial local autonomy, separate daily supervision, lack of interchange and differences in job skills and duties). Thus, weighing all of the above factors, I conclude that Petitioner has failed to rebut the single facility presumption, and that the employees sought to be accreted do not have an overwhelming community of interest with the employees in the existing unit. Accordingly, I cannot clarify the unit to include all full-time, regular part-time, and relief housekeeping employees in the classifications of housekeeping specialist, housekeeping assistant, housekeeping aide, and/or lead housekeeper employed by the Employer and assigned to the Clark Center. On the basis of the foregoing, the petition must be dismissed.[12]

ORDER

IT IS HEREBY ORDERED that the petition in this case is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **December 1, 2003.**

DATED at Oakland, California this 17th day of November, 2003.

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[12] Because I have concluded that the Petitioner has failed to rebut the single facility presumption and that accretion is therefore not appropriate in this case, I need not and do not make any finding as to whether any or all of the conduct of the Petitioner served to waive its right to file the present unit clarification petition.